

AMENDED IN ASSEMBLY MARCH 20, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2323

Introduced by Assembly Member Gorell

February 21, 2014

An act to ~~amend Section 1170 of the Penal Code, relating to sentencing~~ *add Section 17132.10 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2323, as amended, Gorell. ~~Sentencing.~~ *Personal Income Tax Law: gross income exclusion: Olympic games.*

The Personal Income Tax Law provides for various exclusions from gross income.

This bill would also exclude from gross income the value of any prize or award given to a taxpayer by the United States Olympic Committee.

This bill would take effect immediately as a tax levy.

~~Under existing law, certain specified felonies are punishable by imprisonment in a county jail for 16 months, or 2 or 3 years or, where the term is specified, for the term described in the underlying offense. Notwithstanding these provisions, existing law requires that a sentence be served in the state prison where the defendant has a prior or current conviction for a serious or violent felony, has a prior felony conviction in another jurisdiction that has all of the elements of a serious or violent felony, is required to register as a sex offender, or has an aggravated white collar crime enhancement imposed as part of the sentence.~~

~~This bill would make technical, nonsubstantive changes to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17132.10 is added to the Revenue and
2 Taxation Code, to read:

3 17132.10. (a) Gross income shall not include the value of any
4 award given by, or any prize money received from, the United
5 States Olympic Committee on account of the Olympic games.

6 (b) The section shall apply to awards and prize money received
7 on or after January 1, 2014.

8 SEC. 2. This act provides for a tax levy within the meaning of
9 Article IV of the Constitution and shall go into immediate effect.

10 SECTION 1. ~~Section 1170 of the Penal Code, as amended by~~
11 ~~Section 2 of Chapter 828 of the Statutes of 2012, is amended to~~
12 ~~read:~~

13 ~~1170. (a) (1) The Legislature finds and declares that the~~
14 ~~purpose of imprisonment for crime is punishment. This purpose~~
15 ~~is best served by terms that are proportionate to the seriousness of~~
16 ~~the offense with provision for uniformity in the sentences of~~
17 ~~offenders committing the same offense under similar~~
18 ~~circumstances. The Legislature further finds and declares that the~~
19 ~~elimination of disparity and the provision of uniformity of~~
20 ~~sentences can best be achieved by determinate sentences fixed by~~
21 ~~statute in proportion to the seriousness of the offense as determined~~
22 ~~by the Legislature to be imposed by the court with specified~~
23 ~~discretion.~~

24 ~~(2) Notwithstanding paragraph (1), the Legislature further finds~~
25 ~~and declares that programs should be available for inmates,~~
26 ~~including, but not limited to, educational programs, that are~~
27 ~~designed to prepare nonviolent felony offenders for successful~~
28 ~~reentry into the community. The Legislature encourages the~~
29 ~~development of policies and programs designed to educate and~~
30 ~~rehabilitate nonviolent felony offenders. In implementing this~~
31 ~~section, the Department of Corrections and Rehabilitation is~~
32 ~~encouraged to give priority enrollment in programs to promote~~
33 ~~successful return to the community to an inmate with a short~~
34 ~~remaining term of commitment and a release date that would allow~~
35 ~~him or her adequate time to complete the program.~~

~~(3) In any case in which the punishment prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison of any specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because he or she committed his or her crime prior to July 1, 1977. In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council. The court, unless it determines that there are circumstances in mitigation of the punishment prescribed, shall also impose any other term that it is required by law to impose as an additional term. Nothing in this article shall affect any provision of law that imposes the death penalty, that authorizes or restricts the granting of probation or suspending the execution or imposition of sentence, or expressly provides for imprisonment in the state prison for life, except as provided in paragraph (2) of subdivision (d). In any case in which the amount of preimprisonment credit under Section 2900.5 or any other provision of law is equal to or exceeds any sentence imposed pursuant to this chapter, the entire sentence shall be deemed to have been served and the defendant shall not be actually delivered to the custody of the secretary. The court shall advise the defendant that he or she shall serve a period of parole and order the defendant to report to the parole office closest to the defendant's last legal residence, unless the in-custody credits equal the total sentence, including both confinement time and the period of parole. The sentence shall be deemed a separate prior prison term under Section 667.5, and a copy of the judgment and other necessary documentation shall be forwarded to the secretary.~~

~~(b) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall order imposition of the middle term, unless there are circumstances in aggravation or mitigation of the crime. At least four days prior to the time set for imposition of judgment, either party or the victim, or the family of the victim if the victim is deceased, may submit a statement in aggravation or mitigation to dispute facts in the record or the probation officer's report, or to present additional facts. In determining whether there are circumstances that justify~~

1 imposition of the upper or lower term, the court may consider the
2 record in the case, the probation officer's report, other reports,
3 including reports received pursuant to Section 1203.03, and
4 statements in aggravation or mitigation submitted by the
5 prosecution, the defendant, or the victim, or the family of the victim
6 if the victim is deceased, and any further evidence introduced at
7 the sentencing hearing. The court shall set forth on the record the
8 facts and reasons for imposing the upper or lower term. The court
9 may not impose an upper term by using the fact of any
10 enhancement upon which sentence is imposed under any provision
11 of law. A term of imprisonment shall not be specified if imposition
12 of sentence is suspended.

13 (e) ~~The court shall state the reasons for its sentence choice on~~
14 ~~the record at the time of sentencing. The court shall also inform~~
15 ~~the defendant that as part of the sentence after expiration of the~~
16 ~~term he or she may be on parole for a period as provided in Section~~
17 ~~3000.~~

18 (d) ~~(1) When a defendant subject to this section or subdivision~~
19 ~~(b) of Section 1168 has been sentenced to be imprisoned in the~~
20 ~~state prison and has been committed to the custody of the secretary,~~
21 ~~the court may, within 120 days of the date of commitment on its~~
22 ~~own motion, or at any time upon the recommendation of the~~
23 ~~secretary or the Board of Parole Hearings, recall the sentence and~~
24 ~~commitment previously ordered and resentence the defendant in~~
25 ~~the same manner as if he or she had not previously been sentenced,~~
26 ~~provided the new sentence, if any, is no greater than the initial~~
27 ~~sentence. The court resentencing under this subdivision shall apply~~
28 ~~the sentencing rules of the Judicial Council so as to eliminate~~
29 ~~disparity of sentences and to promote uniformity of sentencing.~~
30 ~~Credit shall be given for time served.~~

31 (2) (A) (i) ~~When a defendant who was under 18 years of age~~
32 ~~at the time of the commission of the offense for which the~~
33 ~~defendant was sentenced to imprisonment for life without the~~
34 ~~possibility of parole has served at least 15 years of that sentence,~~
35 ~~the defendant may submit to the sentencing court a petition for~~
36 ~~recall and resentencing.~~

37 (ii) ~~Notwithstanding clause (i), this paragraph shall not apply~~
38 ~~to defendants sentenced to life without parole for an offense where~~
39 ~~the defendant tortured, as described in Section 206, his or her~~
40 ~~victim or the victim was a public safety official, including any law~~

1 enforcement personnel mentioned in Chapter 4.5 (commencing
2 with Section 830) of Title 3, or any firefighter as described in
3 Section 245.1, as well as any other officer in any segment of law
4 enforcement who is employed by the federal government, the state,
5 or any of its political subdivisions.

6 (B) The defendant shall file the original petition with the
7 sentencing court. A copy of the petition shall be served on the
8 agency that prosecuted the case. The petition shall include the
9 defendant's statement that he or she was under 18 years of age at
10 the time of the crime and was sentenced to life in prison without
11 the possibility of parole, the defendant's statement describing his
12 or her remorse and work towards rehabilitation, and the defendant's
13 statement that one of the following is true:

14 (i) The defendant was convicted pursuant to felony murder or
15 aiding and abetting murder provisions of law.

16 (ii) The defendant does not have juvenile felony adjudications
17 for assault or other felony crimes with a significant potential for
18 personal harm to victims prior to the offense for which the sentence
19 is being considered for recall.

20 (iii) The defendant committed the offense with at least one adult
21 codefendant.

22 (iv) The defendant has performed acts that tend to indicate
23 rehabilitation or the potential for rehabilitation, including, but not
24 limited to, availing himself or herself of rehabilitative, educational,
25 or vocational programs, if those programs have been available at
26 his or her classification level and facility, using self-study for
27 self-improvement, or showing evidence of remorse.

28 (C) If any of the information required in subparagraph (B) is
29 missing from the petition, or if proof of service on the prosecuting
30 agency is not provided, the court shall return the petition to the
31 defendant and advise the defendant that the matter cannot be
32 considered without the missing information.

33 (D) A reply to the petition, if any, shall be filed with the court
34 within 60 days of the date on which the prosecuting agency was
35 served with the petition, unless a continuance is granted for good
36 cause.

37 (E) If the court finds by a preponderance of the evidence that
38 the statements in the petition are true, the court shall hold a hearing
39 to consider whether to recall the sentence and commitment
40 previously ordered and to resentence the defendant in the same

1 manner as if the defendant had not previously been sentenced,
2 provided that the new sentence, if any, is not greater than the initial
3 sentence. Victims, or victim family members if the victim is
4 deceased, shall retain the rights to participate in the hearing.

5 (F) The factors that the court may consider when determining
6 whether to recall and resentence include, but are not limited to,
7 the following:

8 (i) The defendant was convicted pursuant to felony murder or
9 aiding and abetting murder provisions of law.

10 (ii) The defendant does not have juvenile felony adjudications
11 for assault or other felony crimes with a significant potential for
12 personal harm to victims prior to the offense for which the sentence
13 is being considered for recall.

14 (iii) The defendant committed the offense with at least one adult
15 codefendant.

16 (iv) Prior to the offense for which the sentence is being
17 considered for recall, the defendant had insufficient adult support
18 or supervision and had suffered from psychological or physical
19 trauma, or significant stress.

20 (v) The defendant suffers from cognitive limitations due to
21 mental illness, developmental disabilities, or other factors that did
22 not constitute a defense, but influenced the defendant's
23 involvement in the offense.

24 (vi) The defendant has performed acts that tend to indicate
25 rehabilitation or the potential for rehabilitation, including, but not
26 limited to, availing himself or herself of rehabilitative, educational,
27 or vocational programs, if those programs have been available at
28 his or her classification level and facility, using self-study for
29 self-improvement, or showing evidence of remorse.

30 (vii) The defendant has maintained family ties or connections
31 with others through letter writing, calls, or visits, or has eliminated
32 contact with individuals outside of prison who are currently
33 involved with crime.

34 (viii) The defendant has had no disciplinary actions for violent
35 activities in the last five years in which the defendant was
36 determined to be the aggressor.

37 (G) The court shall have the discretion to recall the sentence
38 and commitment previously ordered and to resentence the
39 defendant in the same manner as if the defendant had not
40 previously been sentenced, provided that the new sentence, if any,

1 is not greater than the initial sentence. The discretion of the court
2 shall be exercised in consideration of the criteria in subparagraph
3 (F). Victims, or victim family members if the victim is deceased,
4 shall be notified of the resentencing hearing and shall retain their
5 rights to participate in the hearing.

6 ~~(H) If the sentence is not recalled, the defendant may submit~~
7 ~~another petition for recall and resentencing to the sentencing court~~
8 ~~when the defendant has been committed to the custody of the~~
9 ~~department for at least 20 years. If recall and resentencing is not~~
10 ~~granted under that petition, the defendant may file another petition~~
11 ~~after having served 24 years. The final petition may be submitted,~~
12 ~~and the response to that petition shall be determined, during the~~
13 ~~25th year of the defendant's sentence.~~

14 ~~(I) In addition to the criteria in subparagraph (F), the court may~~
15 ~~consider any other criteria that the court deems relevant to its~~
16 ~~decision, so long as the court identifies them on the record,~~
17 ~~provides a statement of reasons for adopting them, and states why~~
18 ~~the defendant does or does not satisfy the criteria.~~

19 ~~(J) This subdivision shall have retroactive application.~~

20 ~~(e) (1) Notwithstanding any other law and consistent with~~
21 ~~paragraph (1) of subdivision (a), if the secretary or the Board of~~
22 ~~Parole Hearings or both determine that a prisoner satisfies the~~
23 ~~criteria set forth in paragraph (2), the secretary or the board may~~
24 ~~recommend to the court that the prisoner's sentence be recalled.~~

25 ~~(2) The court shall have the discretion to resentence or recall if~~
26 ~~the court finds that the facts described in subparagraphs (A) and~~
27 ~~(B) or subparagraphs (B) and (C) exist:~~

28 ~~(A) The prisoner is terminally ill with an incurable condition~~
29 ~~caused by an illness or disease that would produce death within~~
30 ~~six months, as determined by a physician employed by the~~
31 ~~department.~~

32 ~~(B) The conditions under which the prisoner would be released~~
33 ~~or receive treatment do not pose a threat to public safety.~~

34 ~~(C) The prisoner is permanently medically incapacitated with~~
35 ~~a medical condition that renders him or her permanently unable~~
36 ~~to perform activities of basic daily living, and results in the prisoner~~
37 ~~requiring 24-hour total care, including, but not limited to, coma,~~
38 ~~persistent vegetative state, brain death, ventilator-dependency, loss~~
39 ~~of control of muscular or neurological function, and that~~
40 ~~incapacitation did not exist at the time of the original sentencing.~~

~~The Board of Parole Hearings shall make findings pursuant to this subdivision before making a recommendation for resentence or recall to the court. This subdivision does not apply to a prisoner sentenced to death or a term of life without the possibility of parole.~~

~~(3) Within 10 days of receipt of a positive recommendation by the secretary or the board, the court shall hold a hearing to consider whether the prisoner's sentence should be recalled.~~

~~(4) Any physician employed by the department who determines that a prisoner has six months or less to live shall notify the chief medical officer of the prognosis. If the chief medical officer concurs with the prognosis, he or she shall notify the warden. Within 48 hours of receiving notification, the warden or the warden's representative shall notify the prisoner of the recall and resentencing procedures, and shall arrange for the prisoner to designate a family member or other outside agent to be notified as to the prisoner's medical condition and prognosis, and as to the recall and resentencing procedures. If the inmate is deemed mentally unfit, the warden or the warden's representative shall contact the inmate's emergency contact and provide the information described in paragraph (2).~~

~~(5) The warden or the warden's representative shall provide the prisoner and his or her family member, agent, or emergency contact, as described in paragraph (4), updated information throughout the recall and resentencing process with regard to the prisoner's medical condition and the status of the prisoner's recall and resentencing proceedings.~~

~~(6) Notwithstanding any other provisions of this section, the prisoner or his or her family member or designee may independently request consideration for recall and resentencing by contacting the chief medical officer at the prison or the secretary. Upon receipt of the request, the chief medical officer and the warden or the warden's representative shall follow the procedures described in paragraph (4). If the secretary determines that the prisoner satisfies the criteria set forth in paragraph (2), the secretary or board may recommend to the court that the prisoner's sentence be recalled. The secretary shall submit a recommendation for release within 30 days in the case of inmates sentenced to determinate terms and, in the case of inmates sentenced to indeterminate terms, the secretary shall make a recommendation to the Board of Parole Hearings with respect to the inmates who~~

1 have applied under this section. The board shall consider this
2 information and make an independent judgment pursuant to
3 paragraph (2) and make findings related thereto before rejecting
4 the request or making a recommendation to the court. This action
5 shall be taken at the next lawfully noticed board meeting.

6 (7) Any recommendation for recall submitted to the court by
7 the secretary or the Board of Parole Hearings shall include one or
8 more medical evaluations, a postrelease plan, and findings pursuant
9 to paragraph (2).

10 (8) If possible, the matter shall be heard before the same judge
11 of the court who sentenced the prisoner.

12 (9) If the court grants the recall and resentencing application,
13 the prisoner shall be released by the department within 48 hours
14 of receipt of the court's order, unless a longer time period is agreed
15 to by the inmate. At the time of release, the warden or the warden's
16 representative shall ensure that the prisoner has each of the
17 following in his or her possession: a discharge medical summary,
18 full medical records, state identification, parole medications, and
19 all property belonging to the prisoner. After discharge, any
20 additional records shall be sent to the prisoner's forwarding
21 address.

22 (10) The secretary shall issue a directive to medical and
23 correctional staff employed by the department that details the
24 guidelines and procedures for initiating a recall and resentencing
25 procedure. The directive shall clearly state that any prisoner who
26 is given a prognosis of six months or less to live is eligible for
27 recall and resentencing consideration, and that recall and
28 resentencing procedures shall be initiated upon that prognosis.

29 (f) Notwithstanding any other provision of this section, for
30 purposes of paragraph (3) of subdivision (h), any allegation that
31 a defendant is eligible for state prison due to a prior or current
32 conviction, sentence enhancement, or because he or she is required
33 to register as a sex offender shall not be subject to dismissal
34 pursuant to Section 1385.

35 (g) A sentence to state prison for a determinate term for which
36 only one term is specified, is a sentence to state prison under this
37 section.

38 (h) (1) Except as provided in paragraph (3), a felony punishable
39 pursuant to this subdivision where the term is not specified in the

1 underlying offense shall be punishable by a term of imprisonment
2 in a county jail for 16 months, or two or three years.

3 ~~(2) Except as provided in paragraph (3), a felony punishable~~
4 ~~pursuant to this subdivision shall be punishable by imprisonment~~
5 ~~in a county jail for the term described in the underlying offense.~~

6 ~~(3) Notwithstanding paragraphs (1) and (2), where the defendant~~
7 ~~(A) has a prior or current felony conviction for a serious felony~~
8 ~~described in subdivision (c) of Section 1192.7 or a prior or current~~
9 ~~conviction for a violent felony described in subdivision (c) of~~
10 ~~Section 667.5, (B) has a prior felony conviction in another~~
11 ~~jurisdiction for an offense that has all the elements of a serious~~
12 ~~felony described in subdivision (c) of Section 1192.7 or a violent~~
13 ~~felony described in subdivision (c) of Section 667.5, (C) is required~~
14 ~~to register as a sex offender pursuant to Chapter 5.5 (commencing~~
15 ~~with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime~~
16 ~~and as part of the sentence an enhancement pursuant to Section~~
17 ~~186.11 is imposed, an executed sentence for a felony punishable~~
18 ~~pursuant to this subdivision shall be served in state prison.~~

19 ~~(4) Nothing in this subdivision shall be construed to prevent~~
20 ~~other dispositions authorized by law, including pretrial diversion,~~
21 ~~deferred entry of judgment, or an order granting probation pursuant~~
22 ~~to Section 1203.1.~~

23 ~~(5) The court, when imposing a sentence pursuant to paragraph~~
24 ~~(1) or (2) of this subdivision, may commit the defendant to county~~
25 ~~jail as follows:~~

26 ~~(A) For a full term in custody as determined in accordance with~~
27 ~~the applicable sentencing law.~~

28 ~~(B) (i) For a term as determined in accordance with the~~
29 ~~applicable sentencing law, but suspend execution of a concluding~~
30 ~~portion of the term selected in the court's discretion, during which~~
31 ~~time the defendant shall be supervised by the county probation~~
32 ~~officer in accordance with the terms, conditions, and procedures~~
33 ~~generally applicable to persons placed on probation, for the~~
34 ~~remaining unserved portion of the sentence imposed by the court.~~
35 ~~The period of supervision shall be mandatory, and may not be~~
36 ~~earlier terminated except by court order. Any proceeding to revoke~~
37 ~~or modify mandatory supervision under this subparagraph shall~~
38 ~~be conducted pursuant to either subdivisions (a) and (b) of Section~~
39 ~~1203.2 or Section 1203.3. During the period when the defendant~~
40 ~~is under such supervision, unless in actual custody related to the~~

1 sentence imposed by the court, the defendant shall be entitled to
2 only actual time credit against the term of imprisonment imposed
3 by the court. Any time period which is suspended because a person
4 has absconded shall not be credited toward the period of
5 supervision.

6 (ii) The portion of a defendant's sentenced term during which
7 time he or she is supervised by the county probation officer
8 pursuant to this subparagraph shall be known as mandatory
9 supervision.

10 (6) The sentencing changes made by the act that added this
11 subdivision shall be applied prospectively to any person sentenced
12 on or after October 1, 2011.

13 (i) This section shall become operative on January 1, 2014.